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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,101	11/20/2003	Ken Hill	30883.0300	1100

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SNELL & WILMER
ONE ARIZONA CENTER
400 EAST VAN BUREN
PHOENIX, AZ 850040001

EXAMINER

ADDIE, RAYMOND W

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/707,101

Applicant(s)

HILL, KEN

Examiner

Raymond W. Addie

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/20/2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,8,9,15 and 18 is/are rejected.
- 7) ☐ Claim(s) 3,7,10-14,16,17 and 19-24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/20/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Oath/Declaration

1. It was not executed in accordance with either 37 CFR 1.4(d)(2).

The Oath was signed by the inventor "Ken Hill" with an EFS signature "/LJZ"; which is improper. A proper example of the Attorney's EFS signature would be --/LJZ/--.

In addition the Oath should have an EFS signature corresponding to the inventors name. Such an EFS signature might be --/Ken Hill/--; which should be located below the inventors name in the "Full Name of Inventor" signature block.

Specification

2. The disclosure is objected to because of the following informalities:

Page 2, line 5, the patent # "6,619,991"; should be --6,619,88--. As is listed on the IDS.

Appropriate correction is required.

3. The abstract of the disclosure is objected to because the phrase "3A", in line 1; should be --A--.. Correction is required. See MPEP § 608.01(b).

Drawings

4. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the photographs submitted do not have the clarity needed to identify specific features of the invention. Further Figs. 3-5 include part numbers and a legend that detracts from the invention illustrated. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 8, 9, 15, 18, 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Mertes # 6,109,826.

Mertes discloses an apparatus for sealing cracks in pavement comprising:

A repository (26) for storing sealant.

A hose (74) attached to the repository (26).

A heated housing (44) for retaining the hose during application of the sealant.

A pump (60) for transporting sealant from the repository through the hose.

At least one attachment member (unnumbered, see Fig. 2) for attaching the trough to the crack sealing apparatus.

Wherein the heated housing (44) for retaining the hose comprises a trough (92), that is located around an outside of said repository. See col. 5, ln. 56-col. 7, ln. 65.

In regards to claims 8, 9, 15 Mertes discloses the trough can include heated fluid or hydraulic coils, heated air coils or any type of convective or conductive heating elements may be utilized to heat the hose (74). The separate references to heated fluid and hydraulic coils, is seen to include heated water, oils and other known "heat transfer mediums". See col. 8, lns. 23-39.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mertes #

6,109,826.

Mertes discloses the trough (92) is able to run the entire length of the hose (74). But

does not disclose the use of multiple trough sections. However, it would have been obvious the trough (92) could be formed by a plurality of trough sections, to accommodate different lengths of hose. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the trough of Mertes, in a plurality of sections, in order to accommodate different lengths of hose. See Col. 8, Ins. 40-57.

Allowable Subject Matter

7. Claims 3, 7, 10-14, 16, 17, 19-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

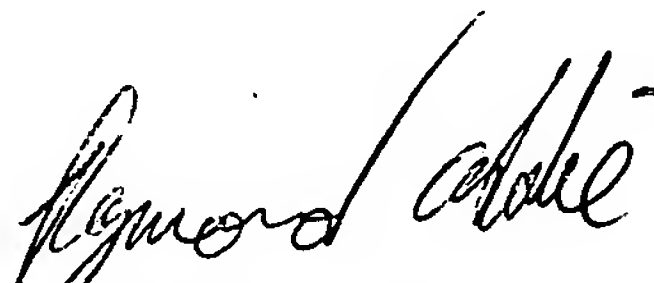
Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Estabrooks # 3,332,581 discloses an apparatus for dispensing adhesive. Kleiger # 5,419,654 discloses a crack filling apparatus. McCracken # 5,251,999 discloses a road repair machine. Yant # 4,812,076 discloses a heating apparatus for road repair vehicles.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 703 305-0135. The examiner can normally be reached on 8-2, 6-8.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Raymond Addie
Patent Examiner
Group 3600

1/21/2005